PART IX.

RULES MADE BY THE COMMISSIONERS NORTHERN, CENTRAL AND SOUTHERN DIVISIONS, WITH THE APPROVAL OF GOVERNMENT, UNDER THE PENSIONS ACT, 1871.*

In exercise of the powers conferred by Sections 5, 8 and 14 of the Pensions Act, 1871, the Commissioners, Northern Division, Central Division, and Southern Division, have, with the approval of Government, framed the following rules in supersession of the rules under section 14 of the said Act, published at page 656 of the *Bomb y Government Gazette* of 7th August 1873, and of all other rules and orders on the same subject hitherto in force in any part of the Divisions of the said Commissioners:—

I.—Under Section 5.†

Disposal of claims concerning service pensions;

1. Claims relating to pensions or gratuities on account of service, whether in the civil, military, naval, or any other department of the administration, are to be inquired into and disposed of in such manner as may be directed in the Civil Pension Code, or in any rules or orders for the time being in force applicable to such pensions respectively. (G. No. 6849, *B. G. G.*, 1879, Pt. I., pp. 1020 to 1027.)

and of claims relating to service watan allowances.

2. Claims relating to any cash payment forming part of the property of a watan, in respect of which no service commutation settlement has been effected, will be inquired into and disposed of in accordance with the provisions of the Bombay Hereditary Offices Act and of the rules and orders from time to time in force thereunder. In the event of any such claim being preferred to which none of the said provisions shall appear to be applicable, the orders of Government should be obtained through the proper channel previous to the disposal thereof.

Extent of applicability of rest of these Rules.

‡3. Nothing in the rest of these Rules applies to any pension, gratuity or cash payment to which the two last Rules apply.

Disposal of claims preferred under section 5.

4. Claims preferred to a Collector under section 5 of the Act may be either—

(*a*) against Government only, or

(*b*) against Government and one or more private parties jointly, or

(*c*) against private parties only.

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* These Rules have been adapted to Sind under Government Resolution No. 7171 of 28th November 1880.

The Rules known as the "Amended Rules of 1842," under which cash allowances were adjudicated, have the force of law under the Pensions Act in this Presidency, but are now seldom required.

† The provisions of sections 4, 5, & 6 of the Pensions Act, 1871 do not appear applicable to haks payable by an Inámdár and not by Government. The Act relates only to cash allowances payable by Government. (G. R. No. 477 of 17th January 1885, R. D.)

‡ With reference to Devasthán cash allowances *vide* Memo. by Acting L. R. accompanying G. R. 7099, 20th September 1889, R. D., quoted *infra*, p. 305.

Claims falling under class (*a*) or (*b*) shall ordinarily be disposed of by the Collector; but whenever any important legal question is involved which the Revenue Officers concerned may not feel themselves competent satisfactorily to deal with, the Collector may, with the previous sanction of the Commissioner, issue a certificate under section 6 of the Act authorizing the Civil Court to try the case.

Claims falling under class (*c*) shall be disposed of by the Collector if the question at issue between the parties is not of a complicated or difficult nature; but if the claimant applies for a certificate under section 6 of the Act, and sets forth satisfactory reasons for such application, or if the question at issue between the parties appears to be of a complicated or difficult nature, or if the claim is one which if awarded could only be enforced by a Civil Court, the Collector may issue a certificate under the said section 6 authorising the Civil Court to try the case: Provided that no certificate shall be issued for any case which could not be decided by the Civil Court in favour of one or more of the parties thereto without making an order or decree such as it is prohibited from making by the said section.

Previous sanction of Commissioner when necessary to final order of disposal.

5. Except in the cases provided for in the last paragraph of Rule 7, no claim by which the liability of Government to pay any pension or grant is affected directly or indirectly shall be disposed of by a Collector without first obtaining the sanction of the Commissioner of the Division to the order which he proposes to pass.

Reference of claims for inquiry to subordinate officers.

6. Any claim preferred to a Collector under section 5 of the Act may be referred by him for inquiry to any Assistant or Deputy Collector or other officer subordinate to him, and every Assistant or Deputy Collector in charge of tálukas may receive claims on behalf of the Collector and forward the same with his opinion after inquiry to the Collector; but every order for disposing of a claim or for granting a certificate under section 6 shall be made with the previous sanction of the Commissioner by the Collector himself.

Law, &c., to be observed in disposal of claims.

7. Claims relating to pensions or grants are to be disposed of in accordance with—

(*a*) The law, if any, for the time being in force applicable to such claims,

(*b*) The terms and conditions of the sanad or other document, if any, under which such pensions or grants are enjoyed.

(*c*) The rules or orders of Government for the time being in force if applicable to such claims.

But if any claim is brought, the subject-matter of which has been already inquired into and disposed of by competent authority, the Collector will merely record the fact of such previous decision, and dispose of the claim accordingly.

II.—Under Section 8.

Payments to be for the year commencing 1st May, but may be made in instalments.

8. All payments of pensions or grants are usually to be made in one lump sum for the year commencing on the 1st May and ending 30th April, but applications for their payment by monthly or quarterly instalments may be considered and disposed of by the Collectors, subject to the sanction of the Commissioners.

Payments of arrears.

9. Pensions and grants, for the payment of which application is duly made at the proper period, will be paid in full, except in the case of payment being suspended, pending the orders of a Civil Court or pending inquiries by Government or by any officer of Government. But if, owing to non-application or other neglect on the part of the claimants, such payments fall into arrear, the pensions or grants will be paid as follows:—

For the current year, in full.

First year's arrears, in full.

Second do., subject to a deduction of 10 per cent.

Third	do.,	do.	20 do.
Fourth	do.,	do.	30 do.
Fifth	do.,	do.	40 do.

Provided that no deduction shall be made under this Rule from arrears of payments due (1) on account of village devasthán allowance not exceeding Rs. 5 per annum in amount, or (2) under compensation bonds.

The "current year" means the year within which payment is properly due under Rule 14.

Payment of arrears due to deceased persons.

10. Subject to the provisions of Rule 9, Collectors may authorize the payment of arrears due to a deceased person after such investigation as shall satisfy them—

(*a*) of the actual date of such person's death, and

(*b*) that the applicant is entitled as such person's legal heir, or otherwise, to receive payment.

Pension or grant not drawn for six years to lapse.

11. Any pension or grant for payment of which no application is duly made for more than six years, or in the case of Hardás Gosávis' allowances, two years, is to be struck off the books, and all arrears forfeited.* (Notn. No. 623, *B. G. G.*, 1883, Pt. I., p. 83.)

*NOTE.—"A cash allowance payable to two persons A and B is disbursed to them in alternate years, so that if A receives payment of the whole allowance during 1882, B will be entitled to receive it during 1883, and so on.

"A not having presented himself before the Mámlatdár to demand the money payable when his turns came, it has remained unpaid for over six years. The other co-sharer B has however received payment of the allowance during the years in which it was payable to him according to the arrangement mentioned in the last paragraph.

Memorandum from the Remembrancer of Legal Affairs:—"It appears that the pension receivable by A and B in alternate years is one and the same pension. B has duly applied for

But in certain cases may be re-admitted.

But if the pension or grant is held under a permanent or hereditary title, is may be re-admitted without payment of arrears if a claim thereto is duly preferred under section 5 of the Act within twelve years from the date of the last payment.

Date of applications for arrears to be noted.

12. The date on which application for payment was made must be noted by the disbursing officer on all bills for arrears.

III.—Under Section 14.

Place of payment of pensions and grants.

13. Pensions or grants will be paid at the following places, namely :—

(1) If payable on behalf of a religious institution, at the treasury of the district or táluka in which such institution is situated, when the amount of the pension or grant exceeds Rs. 5 per annum, or, whatever the amount, when there is no hereditary patel in the village in which such institution is situated, and through the patel of the village in which such institution is situated when the amount does not exceed Rs. 5 per annum and there is an officiating hereditary patel in such village.*

(2) If payable on behalf of a religious institution in foreign territory, at the nearest Government treasury.

(3) If the pension or grant is personal, at the treasury most convenient to the recipient.

Orders for permitting transfers of payment under the above clause (3) will be made by the Collectors if the transfer sought is from one treasury to another within the same Collectorate, by the Commissioners if the transfer sought is from a treasury in one Collectorate to a treasury in another Collectorate within the same division, and by Government in any other case.

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and received the pension in the year in which he was entitled to payment and his applications should, I think, be held to have kept the title to the pension both of himself and of A alive. The terms of No. 11 of the rules under section 8 of the Pensions Act do not apply to the case any more than they would be applicable if A and B were one and the same individual, who for some reason of his own neglected to apply for payment in alternate years. Rule 9 is, I think, the only rule that can be fairly applied to the case." (G. R. No. 22, dated 3rd January 1883, R. D).

*Now, in cases where the allowances are paid to hereditary Patels a case requiring the operation of Rule XI of the Pension Rules is not likely to occur, as Government divest themselves of all responsibility as regards the allowances after they are once disbursed. But when there is no hereditary Patel in the village in which a religious institution is situated, the payment of any grant pertaining to it, whether it exceeds Rs. 5 or not, is to be made under the rules at the treasury of the district or táluka in which the village is situated. In such cases Rule XI of course applies, and under it any pension or grant, whatever be its amount, for payment of which no application is duly made for more than six years, should be struck off the books, and all arrear forfeited. (G. R. No. 3625, dated 5th May 1885, R. D.)

14. All pensions and grants shall be deemed to be due on the 1st May next after the completion of the year in respect of which they are payable, but shall ordinarily be payable only in the months respectively fixed, or hereafter to be fixed, by or under the orders of Government for payment of pensions and grants of the various descriptions. But when payment in monthly or quarterly instalments has been directed by the Collector under Rule 8, payments will be made in accordance with such direction.

Times of payment.

*15. Pensions and grants will be paid only to those persons whose names have been authorizedly entered in the records as the payees thereof, or to their duly empowered attorneys or mukhtyárs, or, if they are minors, to their administrators.

Persons to whom payments are to be made.

Except as is otherwise provided in Rule 23, payments will be made to an attorney, mukhtyár or administrator only, on his satisfying the disbursing officer by the production of a certificate, signed by a Magistrate or by some other well known person of respectability, that the payee was living on the last day of the year or other period for which the pension or grant is due.

Life certificates when necessary.

16. In the case of pensions or grants which Government recognize as alienable, the name of the lawful holder for the time being shall, subject to the provisions of Rules 17 and 18, be entered in the records as payee.

Payee in case of alienable pensions or grants.

But if any such pension or grant is continuable by Government only so long as the original grantee and certain of his descendants shall be in existence, and the payee has obtained a transfer of the same by sale, gift, mortgage, or the like, such payee must produce at the time of each payment a certificate from the Mámlatdár or Mahálkari of the táluka or mahál in which the original grantee or his descendants reside, or, if their residence be in foreign territory, of some British officer resident in the said territory, that such grantee or his said descendants (who should invariably be named) on whose behalf payment is claimed was or were alive on the last day of the year or other period for which such payment is due.

Life certificate of original grantee or of his descendants when necessary.

†17. Applications for mutation of payees' names in the records shall be received and disposed of by the Collectors.

Mutation of payees' names.

*With regard to entries *vide* G. R. No. 176 of 8th January 1887, R. D., *infra* p. 304.

†In view of hardships brought to notice by the Controller of Military Accounts and of the provisions of the Pensions Act, 1871, His Excellency the Governor in Council approves of the adoption of the following rule, subject to the sanction of the Government of India, which will be requested with reference to Articles 495 and 496 of Army Regulations, India, Vol. I, Part II:—

In the case of a transfer of any pension or grant which Government recognize as alienable, such mutation may be made on obtaining the consent in writing of the existing payee without further inquiry.

In the case of alienations; and

In the case of the death of a payee, the Collector may require the production by the applicant of a certificate of heirship and of such other evidence as he deems fit.

In case of death of former payee.

But whenever there is any dispute between conflicting parties, and whenever the Collector doubts whether the pension or grant is any longer continuable, the application shall be regarded by him as a claim under section 5 of the Act, and shall be dealt with accordingly.

When application for mutation of names may be treated as a claim under section 5 of the Act.

Any mutation of names rendered necessary by the decision in any claim under section 5 of the Act (including applications of the nature specified in the last preceding para. of this Rule) may be made by the Collector without further investigation.

Mutation of names consequent upon decision of claims under section 5 of the Act.

18. As a rule, the name of one person only will be entered as payee of each separate entire pension or grant.

Whose name may be entered as payee.

In the case of two or more joint transferees of a pension or grant which Government recognize as alienable, they must elect which one's name shall be so entered, and in the event of their failing so to do within such period as shall be fixed by the Collector, the Collector shall enter the name of such one of them as he deems fit.

In the case of joint transferees; and

In the case of joint-heirs, the Collector will determine who is the eldest male representative of the senior surviving branch of the original

In the case of joint-heirs.

"The Pension Paymaster shall pay arrears of pension due to the estate of a deceased native pensioner to any person whose name may have been registered in his office by the deceased pensioner as the person entitled to such payment. Pensioners should be encouraged to make such registration during their lifetime.

"2. If no such registration has been made, the Pension Paymaster shall pay the arrears which shall be limited to three months except when proof is given of the exact date of the death of the pensioner to any person who shall produce a certificate from the Collector of the district, in which the deceased pensioner resided, declaring such person to be entitled to such payment.

"3. The Collector will grant such a certificate to such person as shall, upon enquiry, appear to him to be best entitled to receive payment, either as sole heir, or as principal representative of all the heirs. For example, if the pensioner has left a widow and sons, the certificate will be given to the eldest son, if of full age, or to the widow as guardian of the sons, if the sons are minors." (G. R. No. 3698 of 6th September 1886, Military Department, and G. R. No. 78 of 10th January 1887, Military Department.)

grantee's or of the transferee's family, or, in the absence of male heirs, who is the senior heiress, and enter his or her name as payee: Provided that at the request of the person thus entitled to be entered as payee, the name of any other member of the family may be substituted by the Collector for that of the said person during such person's life-time.

Joint payees and separate recognition of sharers.

19. If any pension or grant has been hitherto entered in the records in the joint names of two or more persons, or, if any division of a pension or grant has been recognised, and the shares entered separately in the names of the respective co-sharers, such entries may hereafter be continued; but no such new entries shall be made in the records except with the previous sanction of the Commissioner, which shall be given only under very special circumstances.

But Collectors may, on written application, sanction sub-divisions of pensions or grants by disbursing officers at the time of payment by special written order in each case.

Payments to joint payees when their joint receipt is not obtainable.

20. Whenever, in consequence of disagreements amongst joint-payees or for any other reason, their joint receipt shall not be obtainable for any payment already due, the Collector may authorize such payment to be made to any one or more of such joint payees who are willing to pass a receipt.

Payees responsible for proper distribution of pension or grant to sharers.

21. The persons recorded as the payees of pensions or grants, and the persons to whom any payment may be made under the last preceding Rule, are not necessarily entitled to appropriate the whole of such pensions, grants or payment to themselves, but are responsible for distributing the same to all co-sharers or sub-sharers in the proportions to which they are respectively entitled.

Preparation of descriptive rolls.

22. Except, as is otherwise provided in Rule 23, a descriptive roll in the form of Appendix A shall be kept by the disbursing officer of every payee entitled to receive payment of a pension or grant from him. A copy of such roll under the disbursing officer's signature shall be furnished to the payee for production by him at the time of each payment, which shall be noted therein in the manner shown in the form.

Inquiries into identity of claimants.

The person applying for payment must be identified by comparison with the particulars given in the descriptive roll, and the disbursing officer should take every precaution against fraudulent personation. When the payee can write, his signature should, at the time of payment, be compared with that in the descriptive roll in the disbursing officer's possession.

Descriptive Rolls and life-certificates may be dispensed with in certain cases.

23. Descriptive rolls and life-certificates may be dispensed with in the case of natives of rank and pardah-posh ladies; but the disbursing officer will not on that account be exempt from the general responsibility which necessarily attaches to all payments.

Descriptive rolls will not be necessary in the case of pensions or grants on account of native religious or charitable institutions which are paid to panchs or committees or to the village patels, nor in the case of payees of allowances which have been declared to be continuable hereditarily.

Printed lists to be kept of sanctioned pensions and grants.

24. Each Commissioner will prepare under his signature lists in English and in the vernacular of all pensions and grants in each Collectorate in his Division and furnish printed copies thereof to the Mámlatdárs, the Collectors, their Assistants and Deputies, the Accountant General and to Government.

Where such lists have already been prepared under the signature of the Alienation Settlement Officer, new ones need not be prepared.

(G. N. No. 10347, *B. G. G.*, 1885, Pt. I., p. 1430.)

Monthly Correction Statements to be submitted to the Commissioner, Central Division.

25. A monthly statement of all proposed alterations in or additions to the said lists in consequence of decisions or orders passed during the preceding month affecting the same, shall be submitted by each Collector on such date as may be fixed for their submission in communication with the Accountant General to the Commissioner, Central Division, who shall cause the same to be promptly scrutinized in his office, and, after countersigning the same, shall cause duplicate thereof to be sent to the Accountant General with the orders of the Commissioner duly recorded thereon; and shall also direct that the lists in his own office and in the various offices in the Collectorate shall be corrected accordingly. The Accountant General shall also correct his lists in accordance with the duplicate copy of the statement so countersigned and forwarded to him.

No pension or grant shall be entered in, or struck out from, the accounts or the said lists, except with the previous sanction of the Commissioner.

Accounts to be kept by disbursing officers.

26. Disbursing officers will, on the 1st of May of each year, or as soon after as possible, prepare ledgers (peta-khátewahis) agreeably to the táluka forms* Nos. 21 and 22 contained in Hope's Manual of Accounts, and will keep books in the táluka forms Nos. 11 and 12 contained in that Manual, and will be held responsible for the correctness of the entries in these ledgers and books and for their being properly filled in from time to time.

* Nos. 23 and 24 in the revised edition.

Issue of sanads to payees of pensions and grants.

27. Sanads in the name of the Secretary of State for India in Council will be executed by the Collectors, as authorized in the Government of India's Resolution No. 684, dated 31st May 1878, Home Department (*vide* Government Resolution No. 3518, dated 14th June 1878, Judicial Department*), in favour of the payee or payees for the time being of every pension or grant in respect of which the issue of such sanads has been or may hereafter be sanctioned by Government. Such sanads will be issued once for all, and sanads already issued by Alienation Settlement Officers or by Collectors, or by any other officer authorized by Government in this behalf, shall be deemed to have been issued under this Rule.

The terms and conditions to be inserted in these sanads will be such as Government may from time to time authorize, or as may already have been so authorized.

Registers of sanads to be kept.

28. Registers of these sanads will be kept by each Collector, and a general register by each Commissioner.

Which shall be open to inspection, &c.

The said registers shall be open to public inspection during office hours, and extracts from the same shall be obtainable, subject to the same rules and to the payment of the same fees as apply to the case of registers of the documents mentioned in clause (*d*), section 90 of the Indian Registration Act, 1877.

Reference to Civil Court under section 6 of the Act.

29. Reference to the Civil Court under section 6 of the Act of any person claiming a right of succession to or participation in any pension or grant, or any other right relating to any pension or grant, shall be made in accordance with Rule 4 by the Collectors, granting to such person a certificate in the form of Appendix B. authorizing the Civil Court to try the case set forth in such person's claim.

Cash Alienation Lists.

All the work of examining and passing the monthly cash alteration lists should be done by the Commissioner, C. D., in the Alienation Branch of his office; and all Collectors should send their monthly cash alienation alteration statements to that office for approval and admission or orders. These will then be forwarded to the Account General. (G. R. No. 6967, 28th November 1885, R. D.)

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* Printed Part XIV. of this compilation, page 445.

ADDITIONAL ORDERS, AND OPINIONS.

Cash Allowance to Childless Widow.

A cash allowance continued to a childless widow "for life" must reasonably be held to refer only to such period as the widow remains unmarried after the decease of her first husband. The allowance is granted to her for her maintenance after his death, but when she re-marries, her maintenance devolves upon her second husband, and she has consequently no claim to an allowance from the State for the purpose. To avoid any possible doubt in any future cases which may arise when an allowance is given for the maintenance of a widow, it should be specified that such allowance is granted "for life or until re-marriage." (G. R. No. 9501, 26th December 1883, R. D.)

Entry of name of Posthumously Adopted Son, when right to adopt is recognised.

Memo. by L. R:—A cash allowance stood in the name of Daryabai, widow of Jayavantrao Shitole Deshmukh. But in January 1882 the Commissioner, acting in accordance with the above resolution, directed that the name of Babaji Khanderao should be susbtituted for that of the widow, he being a collateral who, in the state of the family as it then existed, would succeed as nearest heir on the death of the widow.

Since then, however, the widow has made a lawful adoption from within the watan family. It is evident from the form of sanad issued to district hereditary officers in the Poona district, in confirmation of the service commutation settlement made with them by Mr. Gordon, that Government have recognized the right of succession in virtue of such adoptions and therefore that the widow's adoptive son has a preferential claim to the allowance over collaterals. Had the adoption taken place previous to Jayavantrao's death, the allowance would have been entered in the adoptive son's name in lieu of his without the least hesitation. A boy adopted by a widow has, according to Hindu law, precisely the same status as if he had been adopted during the widow's husband's life-time. I am of opinion therefore that the adoptive boy's right should be recognized by the Collector, and that his name should now be entered in the records in lieu of Babaji Khanderao's. (G. R. No. 10054 of 22nd December 1884, R. D.)

Rule 15.—Entry of Gordon Settlement Cash Allowances.

Letter from the Commissioner, S. D.:—

"With regard to hereditary district officers' watans brought under Gordon's settlement, Government in their Resolution No. 4659—65-Confl. of 30th June last ruled as follows:—

'Pending any further judicial decision, the practice of entering the name of the male heir of the original grantee should continue and there should be no active interference with any holder of the property as long as a male heir is in existence.'

"2. From this I understand that although the name of the male heir of the original grantee is to be entered, Government is not to interfere with the *possession* or *enjoyment* of the *watan property* by whomsoever it may be held so long as a male heir is in existence. Watan property includes cash allowances. It, therefore, follows that their payment to persons in enjoyment of them for a long period is not to be interfered with, notwithstanding the fact that they may be standing in the Government accounts in the name of the male heir. Under No. 15 of the Rules under the Pensions Act, however, these allowances are to be paid 'only to those persons whose names have been authorizedly entered in the records as the payees thereof or to their duly empowered attorneys,' &c., &c. The names of the actual holders not being entered in Government accounts there will be an account objection to payments being made to them. I, therefore, propose that the name of the actual holder be entered after that of the male heir as recipient of the allowance, *e.g.*, Ramchandra Vithal, recipient Govind Vishvanath. Such entries already appear (*vide* margin) in the Cash Alienation Lists. It will of course be stated in the column of remarks that the allowance will be continued only so long as the male heir of the original grantee is in existence and at the time of every payment the production of the life certificate of the person in whose name the allowance stands will be insisted upon."

Ratnágiri.—Varshásan.
1335 Ganesh Rámchandrabhat Thatte for Ramchandra Vasudev Thatte.

Bijápur.—Varshásan.
108 Bhimbhat bin Visvanathbhat (*N.B.*—Out of this sum of Rs. 57 a maintenance allowance of Rs. 24 per annum is to be paid to Kashibai, widow of Apábhat (eldest son of Bapubhat), during her life-time as per instructions from the Revenue Commissioner, S. D., No. 1688 of 24th October 1861).

Kolába.—Allowances in lieu of inám land, Káji Shábudin valad Káji Ibrahim, his mortgagee Bhikaji Ramchándra.

RESOLUTION.—The course proposed by the Commissioner, S. D., which is supported by the Commissioners, C. and N. Divisions, is approved and sanctioned. (G. R. No. 176 of 8th January 1887, R. D.)

Attachment of Transferable Cash Allowance.

Memo. by L. R:—"I do not think that Government can raise any objection to the attachment by the Civil Court of the allowance, which by the sanad is to be continued without objection or question on the part of Government as to the rights of any rightful holders thereof, whether such rights shall have accrued by inheritance, adoption, assignment or otherwise.

"2. The allowance is not protected from attachment by Section 11 of the Pensions Act (XXIII of 1871), for it is not a pension granted or continued by Government on political considerations on account of past services or present infirmities or as a compassionate allowance." (G. R. No. 8644 of 24th October 1885, R. D.).

Devasthán Cash Allowance liable to attachment—No Certificate necessary to suit for—

Report by the Acting Remembrancer of Legal Affairs on the question whether a suit between the claimants to a devasthán cash allowance requires a certificate under the Pensions Act, and whether in the absence of such certificate execution can be withheld by the Collector.

2. The cases noted in the margin are authorities which appear to support the Subordinate Judge who decided the suit, in his view that the Pensions Act would not bar the suit. There has never, I think, been any decree precisely on the point in the Bombay High Court. But I think it very probable the question would in this Presidency be decided on the same grounds as in Madras.

I. L. R., 2, Mad., 294.
" 5, " 302.
" 11, " 283.

3. Pensions and grants imply pensioners and grantees, personal recipients of the bounty of Government, and Government alone have a right to decide as to the distribution of that bounty.

*I. L. R., 1, Bom. 75.

4. But religious *endowments* are at least in theory impersonal, and are either for the support of some services deemed religious, or the maintenance of some building regarded as sacred. The object of the bounty is not a man at all, although the fund must necessarily be administered by some trustee or manager who no doubt practically exercises proprietary rights over it. Government have no particular interest in seeing that such trustee performs the duties of his trust. If he neglects them or wastes the funds, those interested might bring a suit under section 539, Civil Procedure Code, to compel performance, and the Courts might appoint some other trustee or manager, and Government would pay the cash allowance to the trustees so appointed.

5. Religious endowments are no doubt inalienable under Hindu Law and also, if they take the form of land, under Bombay II of 1863, section 8, clause 3.

I. L. R., 5, Bom. 393.

6. But the restriction applies rather to the *corpus* than to the revenue, or management would be impossible. Alienation is perfectly justifiable within certain limits as to time, justifying necessity and provision for performance of the duties, and Government can hardly in the case of a Hindu religious endowment be in a position to dispute these points with the recipients, even if Government had any interest in doing so.

23. Weekly Reporter, 253 (Privy Council case).
I. L. R., 6, Bom. 596.
" 6, " 298.
20. Weekly Reporter, 471.
12. B. H. C. R., 214.
6. " 250.

7. I must also note that in a very recent decision it has been held that the Pensions Act would not restrict the jurisdiction of the Courts to entertain suits relating to allowances for which Government are admittedly liable to some one or other. The Act is always construed strictly,* and according to the Allahabad High Court, even if the cash allowance were a pension, no certificate would be necessary to a suit between rival claimants thereto, if Government admitted that some one or other was entitled to it. In the case of a devasthán cash allowance, it would probably be held that it was neither a pension nor a grant within the meaning of sections 4, 5 and 6 of the Pensions Act, but an endowment. Government do not dispute their liability to pay the allowance. It seems to be utterly immaterial to Government who is the actual payee.

I. L. R. X, All., 396.

*I. L. R., 4, Bom., 437.

8. It could not for a moment be urged that section 11 of the Pensions Act would exempt the allowance in question from attachment. That section refers to *pensions* granted on political considerations on account of past services or present infirmities or as a compassionate allowance. It has no reference to any but *personal* grantees. (G. R. No. 7099 of 20th September 1889, R. D.)

Pensions Act: Rulings of the High Court on the—.

Toda giras haks are within the scope of the Pensions Act, 1871, and a suit in respect of them must be brought under certificate required by section 6.

The word *hak*, "allowance" or "fee" is equivalent to the word "right" in section 3. (I. L. R. 1 Bom. 203).

Section 4.—Pensions Act applies to Suits between rival Claimants, not only to Suits against Government, but not to Lands.

Section 4 of the Act debars the Civil Court from taking cognizance of any suit relating to pension, &c., whether Government is a party to it or not, without a certificate. Section 6 enables the Revenue Officer to refer the parties to the Civil Court for the determination of their respective interests in the income or other benefit, which the executive will, however, still, as against either or both of the litigants, be at liberty to allow or to withhold.

Lands held free of assessment under a grant from Government, bestowing the land, not merely the revenue, are not within the scope of the Act. (I. L. R. 1 Bom. 75.)

Toda Giras Hak is not exempt from attachment.

A *toda giras hak* is not exempted from attachment under a decree of a Civil Court by Section 11 of the Pensions Act. The word pension in section 11 of the Pensions Act is used in its ordinary and well known sense, *viz.*, that of a periodical allowance or stipend granted in this respect of any right, privilege, perquisite or office but on account of past service or particular merits, or as compensation to dethroned princes, their families and dependants. (I. L. R. 4 Bom. 432.)

Suit to recover Percentage on the Revenue.

A plaintiff alleging that as hereditary deshmukh of certain mahâls he was entitled to be paid directly by the ryots of those mahâls a percentage on the revenue thereon directly assessed, sued to recover a portion of such percentage which had been collected along with the revenue and retained by the Government. *Held* that the claim was "a suit relating to a grant of money or land revenue" and as such excluded from the jurisdiction of the Civil Courts by section 4 of the Pensions Act. (I. L. R. 2 Bom. 9, S. C. L. R. 4 I. A. 119.)

Pensions Act to be strictly construed.

Though sanadi grants in inám, saranjám, &c., are, generally speaking, alienations of land revenue and not grants of land, this is not invariably the case. The ownership in the soil passes if words are employed in the grant which expressly, or by necessary implication, indicate an intention of transfer of such ownership.

The Pensions Act, as an arbitrary enactment, should be construed strictly, and the words "grant of money or land revenue" do not include a grant of the proprietorship of the soil. (I. L. R. 1 Bom. 523.)

Political Pension probably Impartible; Certificate necessary for Suit for its partition.

A saranjám is ordinarily impartible, and, *semble*, a political pension granted in substitution of a resumed saramjám is so likewise. The Pensions Act prevents the Court declaring such a pension partible, unless the Collector should authorize it to do so; and the fact that the Collector authorizes a suit for maintenance out of such a pension affords no ground for presuming that he authorizes a suit for partition of the pension. (I. L. R. 2 Bom. 346.)

Suit for grant of Land Revenue.

A suit in a Civil Court by a hereditary deshmukh relating to a grant of land revenue is prohibited by the Pensions Act XXIII of 1871. (I. L. R. 6 Bom. 209.)

Section 4 applies to Toda Giras, and not merely to rights in nature of Pensions.

A suit against Government upon an alleged agreement by Government to pay money from its treasury in lieu of *toda giras hak* is prohibited by section 4 from being entertained, whatever may have been the consideration for such grant, or the nature of the payment, claim, or right for which such grant may have been substituted. *Quære*, whether Government is bound perpetually to collect *toda giras* for the girásiás, and whether specific performance of such a contract could be enforced. (I. L. R. 4 Bom. 437). This was affirmed on appeal. (I. L. R. 5 Bom. 408, P. C.). There is no reason, either in the language of the Act itself or in any antecedent legislation, for construing section 4 as applicable only to rights in the nature of pensions. (S. C. L. R. 8, I. A. 77).

Jághírs generally within the Pensions Act.

A grant in jághír or saranjám is very rarely grant of the soil. As a general rule they are grants of land revenue only to which the Pensions Act is applicable (*vide* page 231 of Printed Judgments of 1882, and also Appendix A of Part VI of this Compilation.)

Rules under the Act not retrospective.

No. 16 of rules under the Pensions Act does not apply to rights acquired to pensions before the Act came into force, as there is nothing to show that the legislature intended it to have retrospective effect. Lalbhai Sambhulal, B. H. C. P. J., p. 202 for 1889 per Scott and Jardine, J.J.

Suit requiring Certificate, if brought without one, is without jurisdiction.

When the mortgagee of a desaigiri *hak*, without obtaining the Collector's certificate under section 6 of Act XXIII of 1871, sued the representative of the mortgagor to enforce the mortgage-debt by a sale of the *hak*, and obtained a decree without jurisdiction: *Held* that the proceedings in the suit were without jurisdiction, and that the decree could not constitute the basis of any title or estop the representative from suing for a declaration of his right to the *hak* as a life-holder as against the purchaser at the auction sale held in execution of the decree. (I. L. R. 9 Bom. 285).

Inámdár's claim to Ábkári Taxes is barred by the Pensions Act.

An Inámdár, relying on a grant by the Peshwa's Government of the villages with water trees, grass, wood, quarries, mines, buried treasure, present and future cesses and taxes and assessments, contended that the revenue derived by Government from the licenses granted for tapping trees in the village was a tax within the contemplation of the grant: *Held* that the case falls under the Pensions Act XXIII of 1871 and the Court is therefore ousted of its jurisdiction. (Janardan Bhasker Joshi *vs.* the Secretary of State for India. Appeal No. 85 of 1888, judgment date 10th March 1890).

APPENDIX A.—(See Rule 22.)

Form of Descriptive Roll.

Running Number.	Number in the Alienation List or Petha Khátáwahi.	Name.	Caste or Sect.	Residence.	Personal identification.	Height.	Age at the date of preparing the Roll.	Monthly, Quarterly, Half-yearly, or yearly, Amount.	How long continuable.	Signature of the party whose Descriptive Roll is prepared.	Signature of Witnesses of identification.	Signature of the Officer before whom the Descriptive Roll is taken.	Date of preparing the Rolls.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

PAYMENTS.

When paid.	For what period.	Amount.	To whom paid.	Signature of the Disbursing Officer.	When paid.	For what period.	Amount.	To whom paid.	Signature of the Disbursing Officer.	When paid.	For what period.	Amount.	To whom paid.	Signature of the Disbursing Officer.

APPENDIX B.—(See Rule 29.)

Form of Certificate.

Whereas *A. B.* of is desirous of preferring a claim against *C. D.* of to establish his right to

(*here state clearly the nature of the claim*)

This is to certify that I, *E. F.*, Collector of , do hereby allow, under section 6 of the Pensions Act, 1871, that the said claim may be tried by any Civil Court otherwise competent to try the same.

(Signed) *E. F.*,
Collector.

Dated at
this day of 18 .

Seal of the Collector.